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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,178	05/29/2001	Steven Sims	2053-029-03	7266

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EXAMINER

SUKMAN, GABRIEL S

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,178

Applicant(s)

SIMS, STEVEN

Examiner

Gabriel S. Sukman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 10-19, 22-25, 29-32 and 35-39 is/are pending in the application.
- 4a) Of the above claim(s) 5, 10, 11, 15-19, 22-25 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 12-14, 30-32 and 35-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 5, 10, 11, 15-19, 22-25, and 29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9 August 2004 and 3 December 2004.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 6, 12-14, 30-32, 35, 36, 37, and 39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not describe that the elastomer is an *organic* elastomer. Independent claims 1, 36, and 37 recite this limitation and therefore the claims dependent from these claims are rejected as well.

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Claim 2 recites the limitation "said support" in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the second decay pattern modifier's second element" in lines 2-3 of the claim. There is insufficient antecedent basis for the second decay pattern modifier as well as the second element in the claim.

Claim 36 is rejected as being indefinite due to the limitation in the sixth line of the claim, "said pad being therein an aperture..."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 12, 32, 35-37, and 39 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 4,922,641 to Johnson.

Claims 1 and 3 are anticipated by Johnson as per the discussion in the Office Action of 23 July 2002 since the only amendment to the claim was the addition of an unsupported limitation and a broadening of the limitation regarding the decay pattern modifier. Alternatively, if it is determined that there is support for the newly added limitation, it would have been obvious to one having ordinary skill in the art to replace the springs of Johnson with an organic elastomer since such elastomers are old and

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well known in the art as suitable replacements for metallic springs or other vibration absorbing materials due to their increased lifespan and decreased vulnerability to adverse environmental elements (i.e., organic elastomers will not rust).

The limitations of claim 6 are taught by Johnson as per the discussion in the Office Action of 23 July 2002.

The limitations of claim 12, if cured of definiteness deficiencies, are taught by Johnson as per the discussion in the Action of 23 July 2002.

The limitations of claim 35 are taught by Johnson as discussed in the Action of 23 July 2002 with respect to claim 1.

The limitations of claim 36 are taught by Johnson as well since, even if there exists some venting of the internal air, they are "so sealed that said pad provides pneumatic cushioning when the firearm is discharged." That is, even if some air escapes, some cushioning is still provided. It is not claimed that the apertures are completely sealed off from the environment.

The limitations of claim 37 are taught by Johnson as per the discussion above with respect to claim 1 and the discussion in the Action of 23 July 2002 regarding claim 16.

The limitations of claim 39 are taught by Johnson as discussed above with respect to claim 1 and in view of the disclosure in col. 3, lines 6-16, which describe the use of screw fasteners to secure the recoil pad to the stock.

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The limitations of claim 32 are taught by Johnson since there exist smaller hollowed out cavities that do not include a vibration decay pattern modifier between the larger cavities that are occupied by the modifiers.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of U.S. Patent No. 5,362,046 to Sims.

The limitations of claim 2 are taught by the modification of the invention of Johnson in view of Sims as discussed in the Action of 23 July 2002 since there were no amendments to claim 2.

The limitations of claim 38 are clearly taught by the modification of the invention of Johnson in view of Sims as discussed with respect to claim 2 in the Action of 23 July 2002.

Claims 13, 14, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

The limitations of claims 13, 14, 30, and 31 are taught by the invention of Johnson as per the discussion of these claims in the Action of 23 July 2002 and in view of the rejection of claim 39, above.

Response to Arguments

Applicant's arguments filed 26 June 2003 and 15 January 2004 have been fully considered but they are not persuasive. The new claim term "organic elastomer" does not have support in the specification and the arguments regarding that aspect of the rejections are therefore moot. Further, the language referring to the apertures being sealed in claim 36 does not patentably distinguish the invention from Johnson since it does not claim that the cavities are completely sealed off from the environment but instead simply claims that the air in the cavities is capable of providing a cushioning effect. All other arguments are either not persuasive or pertain to withdrawn claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel S. Sukman whose telephone number is (703) 308-8508. The examiner can normally be reached on M-F, 8:30-6:00, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gss



MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER